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DEQ-SWRO

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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David K. Paylor
Director

Michael D. Overstreet
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Oldcastle Industrial Minerals Registration No. 10385

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1307, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and Oldcastle Industrial Minerals for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1153.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Oldcastle Industrial Minerals, Castlewood, VA 24224

SECTION C: Findings of Facts and Conclusions of Law

1. On March 20, 2007, Don Hilt, Environmental Inspector, Sr., of the Virginia Department of Environmental Quality – SWRO, conducted an air compliance inspection by doing Visible Emission Observations at Oldcastle's facility in Castlewood, Virginia (Reg. #10385). Excess fugitive dust emissions were observed for four (4) hours. Pictures were taken to document the violation. The following deficiencies were documented:
 - A. Permit condition No. 3 of Oldcastle's construct and operate permit dated May 4, 2006 states,

"Fugitive Dust Emission Controls - Fugitive emission controls shall include the following, or equivalent, as a minimum:

 - a. Dust from drills, shot piles, material handling, screens, crushers, transfers, bagging operations, load-outs, and traffic areas shall be controlled by wet suppression or equivalent (as approved by the DEQ). There shall be no exemption from this requirement due to cold weather. The wet suppression spray systems shall be operated at optimum design.
 - b. All material being stockpiled shall be kept adequately moist to control dust during storage and handling or covered at all times to minimize emissions.
 - c. Dust from haul roads and traffic areas shall be controlled by the application of asphalt, water, suitable chemicals, or equivalent methods approved by the DEQ.
 - d. Reasonable precautions shall be taken to prevent deposition of dirt on public roads and subsequent dust emissions. Dirt, product, or raw material spilled or tracked onto paved surfaces shall be promptly removed to prevent particulate matter from becoming airborne." (9 VAC 5-50-260 and 9 VAC 5-50-90)

Excess fugitive dust emissions were observed for four (4) hours during the DEQ inspection on 3-20-07.
2. On March 30, 2007, DEQ sent a Notice of Violation Letter (NOV No. 3-1-SWRO-2007) by Certified Mail-Return Receipt Request, to Oldcastle Industrial Minerals, informing the Company that DEQ had reason to believe that the violations referenced in Section C1 had occurred.
3. The following regulations may be applicable in part or whole to the above listed permit deficiencies : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits..."

9 VAC 5-50-90	Standards for fugitive dust/emissions
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4. On April 9, 2007, DEQ was contacted by Oldcastle Minerals in response to the NOV. A meeting was scheduled for April 19, 2007, at the DEQ office in Abingdon, to discuss the issues of the enforcement action.

SECTION D: Agreement and Order

1. By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders Oldcastle Industrial Minerals and Oldcastle voluntarily agrees, to a civil charge of \$4,500 in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include Oldcastle Industrial Mineral's Federal ID number and shall identify that payment is being made as a result of this Order. The payment shall be made within 30 days of the effective date of this Order.

2. The Company shall submit an acceptable Corrective Action Plan, including milestone dates, detailing actions that Oldcastle Industrial Minerals has taken and/or plans to take to correct the current problem and actions implemented to prevent future noncompliance with above referenced regulations. This plan and schedule shall be submitted within 30 days of signing of this document and is subject to the approval of the Director, DEQ-SWRO.

SECTION E: Administrative Provisions

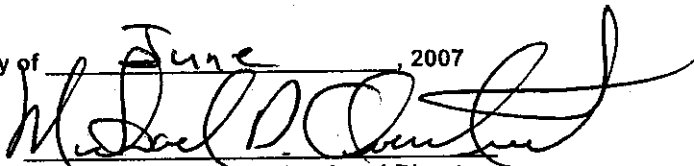
1. The Board may modify, rewrite, or amend the Order with the consent of Oldcastle Industrial Minerals for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Stationary Source Permit to Construct and Operate Permit dated May 4, 2006.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Oldcastle Industrial Minerals as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Oldcastle Industrial Minerals admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Oldcastle Industrial Minerals consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Oldcastle Industrial Minerals declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.

7. Failure by Oldcastle Industrial Minerals to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Oldcastle Industrial Minerals shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Oldcastle Industrial Minerals must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Oldcastle Industrial Minerals shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

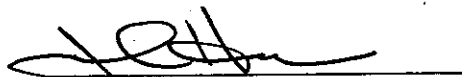
Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.
10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Oldcastle Industrial Minerals. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Oldcastle Industrial Minerals. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Oldcastle Industrial Minerals from its obligation imposed in this Order, shall not operate to Oldcastle Industrial Minerals from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

13. By its signature below, Oldcastle Industrial Minerals voluntarily agrees to the issuance of this Order.

And it is ORDERED this 25th day of June, 2007


Michael D. Overstreet, Regional Director
Department of Environmental Quality

Oldcastle Industrial Minerals voluntarily agrees to the issuance of this Order.


Josh Horne
Plant Manager
Oldcastle Industrial Minerals

Date: July 18, 2007

Commonwealth of Virginia

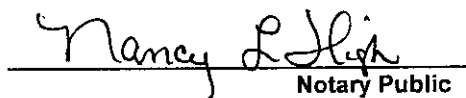
City/County of Russell

The foregoing document was signed and acknowledged before me this 18th day of

June, 2007 by Josh Horne on behalf of

Oldcastle Industrial Minerals

Date: 6-18-07


Nancy L. High
Notary Public

My commission expires: 12-31-09

Registration Number: 168613